

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ELK GROVE UNIFIED SCHOOL  
DISTRICT AND BERKELEY UNIFIED  
SCHOOL DISTRICT

OAH CASE NO. 2013020224

ORDER GRANTING MOTION TO  
DISMISS BERKELEY UNIFIED  
SCHOOL DISTRICT

On February 7, 2013, Student filed a Request for Due Process Hearing (complaint), naming Elk Grove Unified School District (EGUSD) and Berkeley Unified School District (BUSD) as the respondents.

On February 11, 2013, BUSD filed a Motion to Dismiss, alleging that BUSD is not legally required to provide Student with a free appropriate public education (FAPE).

On February 14, 2013, Student filed a response to the Motion to Dismiss. The Office of Administrative Hearings (OAH) received no response to the Motion to Dismiss from EGUSD.

APPLICABLE LAW

The Individuals with Disabilities Education Act (IDEA) is designed to “ensure that all children with disabilities have available to them a free appropriate public education” (FAPE). (20 U.S.C. § 1400 (d)(1)(A),(B), and (C); see also Educ. Code, § 56000.)

The purpose of the IDEA (20 U.S.C. § 1400 et. seq.) is to “ensure that all children with disabilities have available to them a free appropriate public education,” and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint “with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.” (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and

the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

A “licensed children’s institution” means a residential facility that is licensed by the state, or other public agency having delegated authority by contract with the state to license, to provide nonmedical care to children, including, but not limited to, individuals with exceptional needs. “Licensed children’s institution” includes a group home as defined by subdivision (g) of Section 80001 of Title 22 of the California Code of Regulations. (Ed. Code § 56155.5.) “Group home” means any facility of any capacity which provides 24-hour care and supervision to children in a structured environment with such services provided at least in part by staff employed by the licensee. (Cal. Code Regs., tit. 22, § 8001(g).)

Where individuals with exceptional needs are placed in a licensed children’s institution (LCI) by a public agency, other than an educational agency, the “special education local plan area shall be responsible for providing appropriate education to individuals with exceptional needs residing in licensed children’s institutions ... located in the geographical area covered by the local plan.” (Ed. Code §§ 56155, 56156.4(a).)

## DISCUSSION

In the present matter, BUSD contends that (a) Student has been placed in a LCI (b) by a public agency (c) who is not an educational agency (d) outside the boundaries of the BUSD, and therefore BUSD is not responsible for the education of the Student during the pendency of Student’s placement in the LCI.

Student agrees with BUSD’s contentions to the extent that Student’s placement is determined the responsibility of EGUSD. Student further contends that if the Student’s placement is not considered a placement at an LCI by a public agency then BUSD should not be dismissed as BUSD is the district of residence of the parent of Student.

Student is a 14 year old student, eligible for special education, who was adopted and eligible for the Adoption Assistance Program (AAP). Her mother lives within the boundaries of BUSD. The student is currently placed at Milhous Children’s Services (Milhous), located in Sacramento California. Milhous is not located within the boundaries of BUSD.

Student was placed at Milhous on February 7, 2013, following her release from juvenile custody on February 6, 2013. Student was placed at Milhous through an agreement between Alameda County Social Services Agency, Adoption Assistance Program and Student’s mother. Student’s placement at Milhous is funded by Alameda County Social Services Agency, Adoption Assistance Program.

Student provided a copy of Milhous' license as a group home from the State of California, Department of Social Services effective October 26, 1999.<sup>1</sup> Milhous, as a group home, clearly falls under the definition of an LCI. Student also provided OAH with the AAP agreement indicating that AAP would fund student's non-education costs at Milhous and that the funds would be paid directly to Milhous.

The Alameda County Social Services Agency, which administers the AAP, is a public agency who is not an educational agency. Therefore, the Student's placement at Milhous meets the requirements of Ed. Code §§ 56155, 56156.4(a) and the district where Student's mother lives (BUSD) is not the educational agency responsible for the education of Student while she resides at Milhous under the AAP agreement. The Special Education Local Plan Area where Milhous is located bears responsibility for Student's education while she is placed at Milhous under the AAP agreement.

### ORDER

Berkeley Unified School District's Motion to Dismiss is granted. Berkeley Unified School District is dismissed as a party in the above-entitled matter. The matter will proceed as scheduled against the remaining party.

IT IS SO ORDERED.

Dated: February 19, 2013

/s/

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MARGARET BROUSSARD  
Administrative Law Judge  
Office of Administrative Hearings

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<sup>1</sup> Student filed her Due Process Complaint and Motion for Stay Put, with supporting attachments, on February 6, 2013. After Student was notified that she must file the Motion for Stay Put as a separate motion, Student refiled the Stay Put Motion on February 12, 2013, relying on the attachments from the original Complaint and Motion. BUSD filed its Motion to Dismiss on February 11, 2013, also relying on the attachments from the February 6, 2013 Complaint and Motion. All references to documents in this order are from the Original Complaint and Motion.